

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

3COM CORPORATION,

Plaintiff,

v

D-LINK SYSTEMS, INC,

Defendant,

No C 03-2177 VRW

ORDER ON 28 USC § 1927
SANCTIONS

REALTEK SEMICONDUCTOR CORP,

Intervenor

On May 5, 2005, the court found that plaintiff 3Com Corporation (3Com) had unreasonably and vexatiously multiplied the proceedings in this case in violation of 28 USC § 1927. Doc #251 at 18-19. The parties are familiar with the court's May 5, 2005, order and its factual predicate and thus the court will not recount this history here. The court directed defendant D-Link Systems, Inc (D-Link) to file its request for attorney fees and costs

1 reasonably incurred in (1) preparing for and attending both
2 discovery proceedings before Judge Zimmerman, (2) defending against
3 3Com's motion to amend its preliminary infringement contentions
4 (PIC) and (3) attending the March 3, 2005, hearing on 3Com's motion
5 to amend its PIC. Id at 19-20. D-Link submitted its request for
6 attorney fees and costs on May 20, 2005. Doc #263. Based upon D-
7 Link's memorandum and the applicable federal law, the court ORDERS
8 3Com to pay D-Link's fees and costs in the amount of \$128,919.47
9 pursuant to § 1927.

10
11 I

12 To determine a reasonable attorney fee award, the court
13 employs the lodestar method. Yahoo!, Inc v Net Games, Inc, 329 F
14 Supp 2d 1179, 1182 (ND Cal 2004). "Three figures are salient in a
15 lodestar calculation: (1) counsel's reasonable hours, (2)
16 counsel's reasonable hourly rate and (3) a multiplier thought to
17 compensate for various factors (including unusual skill or
18 experience of counsel or the ex ante risk of nonrecovery in the
19 litigation)." In re HPL Technologies, Inc, Securities Litigation,
20 2005 US Dist LEXIS 7244, *20 (ND Cal 2005) (Walker, J). Because §
21 1927 sanctions are not based upon the results achieved by a
22 prevailing party in the litigation (indeed, a losing party could
23 potentially receive a § 1927 award), a multiplier is irrelevant to
24 the calculation of the lodestar under § 1927. Accordingly, the
25 court need only consider D-Link's counsel's reasonable hours and
26 reasonable hourly rate in computing the lodestar.

27 D-Link requests compensation for 370 hours of legal
28 services performed in connection with (1) preparing for and

1 attending both discovery proceedings before Judge Zimmerman, (2)
2 defending against 3Com's motion to amend its PIC, (3) attending the
3 March 3, 2005, hearing on the motion to amend and (4) drafting and
4 filing D-Link's motion to strike 3Com's PIC. Doc #263 (McCauley
5 Decl) at 2-7. Although the May 5, 2005, order listed only the
6 hours expended on (1)-(3) as recoverable, upon further
7 consideration, the court agrees with D-Link that it should be
8 allowed to recover for the hours expended in drafting its motion to
9 strike, for this motion would not have been required had 3Com
10 heeded Magistrate Judge Zimmerman's discovery order and voluntarily
11 withdrawn its PIC.

12 The court finds D-Link's request for 370 hours
13 reasonable. 3Com's obstinate refusal to recognize the error
14 committed in drafting the PIC forced D-Link to prepare for and
15 appear at two lengthy discovery hearings, draft and defend a motion
16 to strike, oppose a motion to amend, depose two additional
17 witnesses and prepare for and attend the March 3, 2005, hearing.
18 Considering the complexity of the factual and legal questions
19 raised in these motions and depositions -- a complexity in large
20 measure of 3Com's making -- as well as the quality of D-Link's
21 counsel's work, the court finds the number of expended to be
22 reasonable.

23 The court will not, however, allow D-Link to recover for
24 the 68.2 hours expended in drafting its Rule 11 motion for
25 sanctions against 3Com (McCauley Decl at 5-6), a motion that was
26 never filed with the court. Unlike D-Link's appearances at the
27 hearings and its filing of a motion to strike, the Rule 11 motion
28 was entirely voluntary and was apparently drafted to buttress D-

1 Link's opposition to the motion to amend.

2 The court now turns to determining a reasonable hourly
3 rate. More than one methodology exists to make this determination.
4 Billing all attorney time at a "blended" hourly rate is probably
5 the appropriate methodology in most lodestar calculations based on
6 its simplicity and promotion of efficiency. HPL Technologies, 2005
7 US Dist LEXIS 7244 at *24. Such blended rates (perhaps in the \$200
8 per hour neighborhood) typically depend on "the overall billing
9 mix" including substantial time expended by junior attorneys with
10 less experience and low hourly billing rates. Id at *25. In the
11 present case, however, 93.8% of all attorney hours (aside from
12 paralegal and legal staff hours), was expended by senior attorneys
13 with more than thirteen years of legal experience. Indeed, Steven
14 Morrissett, an attorney with more than 20 years of legal
15 experience, billed 141.2 hours during the course of these
16 proceedings. McCauley Decl at 1. Moreover, it is not surprising
17 that senior attorneys were utilized to analyze and argue the
18 complex issues presented in 3Com's and D-Link's discovery disputes
19 and motion practice; these issues concerned (1) when and if certain
20 network interface cards were scientifically tested, (2) if errors
21 were made during this testing and ultimately (3) whether the
22 correct D-Link products were accused in the PIC. Such case-
23 critical matters could not reasonably be delegated to junior
24 attorneys.

25 Because of the large amount of senior attorney time
26 expended, the court concludes that the use of a blended hourly rate
27 appears insufficient to reflect the market rate for D-Link's
28 counsel's services.

1 In Laffey v Northwest Airlines, Inc, 572 F Supp 354 (D DC
2 1983), aff'd in part, rev'd in part on other grounds, 746 F2d 4 (DC
3 Cir 1984), the court employed a variety of hourly billing rates to
4 account for the various attorneys' different levels of experience.
5 The Laffey methodology is useful when an unusually large fraction
6 of either senior or junior attorney time is necessary, and spent,
7 by counsel on behalf of a client. The Laffey methodology allows
8 the court to reflect in the fee award the disproportion of the time
9 spent by senior or junior attorneys at a rate commensurate with
10 such attorneys' market hourly rate. Cf HPL Technologies, 2005 US
11 Dist LEXIS 7244 at *25-26. The Laffey methodology, or the "Laffey
12 matrix," has since become a well-established objective source for
13 rates that vary by experience in the District of Columbia. Id at
14 26; see
15 www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_4html.

16 As detailed above, the large fraction of senior attorney time
17 utilized by D-Link leads this court to conclude that the Laffey
18 matrix is a good fit for the this case.

19 Under the 2005 Laffey matrix, attorneys with 20 or more
20 years of experience bill \$390/hour; attorneys with 11-19 years of
21 experience bill \$345/hour; attorneys with 4-7 years of experience
22 bill \$225/hour; and paralegals and law clerks bill \$110/hour.
23 These figures are tailored for the District of Columbia and thus
24 apply without adjustment to attorneys Elizabeth Niemeyer and E
25 Robert Yoches, both of whom reside in the District of Columbia.
26 The District of Columbia, however, has a somewhat lower cost of
27 living than the San Francisco Bay area (in which attorneys
28 Morrissett and Robert McCauley reside) and thus the court will

adjust these figures accordingly for Morrissett and McCauley.

The locality pay differentials within the federal courts -- which, like law firms, employ lawyers and legal support staff -- can approximate this difference. See http://jnet.ao.dcn/Human_Resources/Pay_Tables/2005_Pay_Tables/Judiciary_Salary_Plan_Pay_Tables_2005.html. The Washington-Baltimore area has a +15.98% locality pay differential; the San Francisco-Oakland-San Jose area has a +26.39% locality pay differential. Thus, adjusting the Laffey matrix figures upward by approximately 9% will yield rates appropriate for the Bay area.¹

Applying this adjustment to an attorney when appropriate, the court calculates these following data:

Attorney	Experience	Rate (per hr)	Adjustment	Total Hours	Total lodestar
Yoches	25	\$390	n/a= \$390	67.8	\$26,442.00
Morrissett	20+	\$390	9% = \$425	141.2	\$60,010.00
McCauley	13	\$345	9% = \$376	28.6	\$10,753.80
Niemeyer	5	\$225	n/a= \$225	15.7	\$3,532.50
Paralegals/ Law Clerks	n/a	\$110	9% = \$120	116.7	\$14,004.00
Total				370.0	\$114,742.30

Accordingly, pursuant to § 1927, D-Link is entitled to \$114,742.30 in reasonable attorney fees.

II

Additionally, D-Link requests \$14,177.17 in costs reasonably incurred in (1) traveling to and attending all three

¹(126.39 - 115.98) / 115.98 = 0.08976, or about 9%.

1 hearings, (2) traveling to and conducting the Rule 30(b)(6)
2 deposition of 3Com and the deposition of Chadwick Jackson, (3)
3 obtaining transcripts of the hearings and the depositions and (4)
4 using courier services to deliver chamber copies of all filed
5 documents. Because most of the traveling in this case required
6 transcontinental flights from the District of Columbia to San
7 Francisco, the court finds these costs to be reasonable.

8
9 III

10 In sum, pursuant to 28 USC § 1927, the court ORDERS 3Com
11 to pay D-Link \$128,919.47 in attorney fees and costs reasonably
12 incurred as a result of 3Com's unreasonable and vexatious
13 multiplication of the proceedings in this case. As stated in the
14 court's May 5, 2005, order, upon payment of these sanctions to D-
15 Link, 3Com may file its amended PIC.

16
17 IT IS SO ORDERED.

18
19 

20 VAUGHN R WALKER

21 United States District Chief Judge
22
23
24
25
26
27
28